

LAND USE

Testimony of Negar Vahidi and Eileen Allen

INTRODUCTION

This land use analysis of the East Altamont Energy Center (EAEC) focuses on two main issues: the project's consistency with local land use plans, ordinances and policies; and the project's compatibility with existing and planned land uses. In general, an electric generation project and its related facilities may be incompatible with existing and planned land uses if it creates unmitigated noise, dust, public health hazard or nuisance, traffic, or visual impacts or when it unduly restricts existing or planned future uses.

LAWS, ORDINANCES, REGULATIONS, AND STANDARDS (LORS)

This section describes federal, state, regional, and local land use LORS applicable to the proposed project.

FEDERAL

Federal Aviation Administration (FAA) – Determination of Hazard to Air Navigation

The proposed project site is approximately 3 miles southeast of the Byron Airport in Contra Costa County. A portion of the proposed project site is shown to be within the Clear Zone of the Byron Airport (Hodges and Shutt, East Contra Costa County Airport Master Plan Report, Byron, California. May 1986). The FAA has made a Determination of No Hazard to Air Navigation associated with the proposed project. This determination concerns the effect of structures on the safe and efficient use of navigable airspace. Under the provisions of Title 49, United States Code, section 44718 and Title 14 of the Code of Federal Regulations, construction or alteration of a structure in the vicinity of an airport cannot exceed obstruction standards and must comply with proper marking and lighting. Any future construction or alteration associated with project facilities would require a separate notice to the FAA. The FAA's determination does not include temporary construction equipment such as cranes or derricks, which may be used during construction. If the height of the construction equipment exceeds the height of the studied structure, a separate notice must be submitted to the FAA (EAEC 2001n).

STATE

Subdivision Map Act (Pub. Resources Code § 66410-66499.58)

The Subdivision Map Act provides procedures and requirements regulating land divisions (subdivisions) and the determining of parcel legality. Regulation and control of the design and improvement of subdivisions, by this Act, has been vested in the legislative bodies of local agencies. Each local agency by ordinance regulates and controls the initial design and improvement of common interest developments and subdivisions for which the Map Act requires a tentative and final map.

Delta Protection Act of 1992

The California Legislature established the Delta Protection Act in 1992 to declare the Sacramento-San Joaquin Delta a natural resource to be protected, maintained, and where possible enhanced for agriculture, wildlife habitat, and recreational activities. The act created the Delta Protection Commission with a mandate to develop a long-term resource management plan for the Delta Primary Zone (Pub. Resources Code § 29700 et seq.). All local government general plans for areas within the Primary Zone are required to be consistent with the Delta Protection Act regional plan for the area. The "Primary Zone" means the delta land and water area of primary state concern and statewide significance which is situated within the boundaries of the delta, but that is not within either the urban limit line or sphere of influence line of any local government's general plan or currently existing studies, as of January 1, 1992. The Secondary Zone consists of areas within the statutory Delta (as defined in section 12220 of the California Water Code) but not part of the Primary Zone. Local plans for land use in the Secondary Zone are not required to conform to the regional plan. The proposed project site exists in the Secondary Zone of the statutory Delta (DPC, 1992).

LOCAL

County of Alameda

Alameda County General Plan

Under California State planning law, each incorporated City and County must adopt a comprehensive, long-term General Plan that governs the physical development of all lands under its jurisdiction. The general plan is a broadly scoped planning document and defines large-scale planned development patterns over a relatively long timeframe.

The General Plan consists of a statement of development policies and must include a diagram and text setting forth the objectives, principles, standards and proposals of the document. At a minimum, a General Plan has seven mandatory elements including Land Use; Circulation; Housing; Conservation; Open Space; Noise and Safety.

Alameda County administers the State required general plan as a group of documents organized by geographic areas and subject matter (Government Code, § 65301).

East County Area Plan

The East County Area Plan (ECAP) is a portion of the Alameda County General Plan. The ECAP was adopted by the Alameda County Board of Supervisors on May 5, 1994 and corrected March 1996. The ECAP provides goals, policies and programs for the physical development for the area designated by the Plan as eastern Alameda County. The Plan addresses specific issues that affect both unincorporated and incorporated areas, but have legal regulatory effect only within currently unincorporated areas. The proposed project site is located within the ECAP area. In 2001 the ECAP was revised as a result of a local initiative, Measure D, which is summarized below.

Specific ECAP policies applicable to the EAEC project are listed below:

Policy 1 directs the County to identify and maintain an Urban Growth Boundary that defines areas suitable for urban development. A related item, Policy 17, restricts the County from approving urban development if it is located outside of the Boundary;

Policy 14A restricts the County from authorizing public facilities or other infrastructure in excess of that needed for development consistent with the agricultural land preservation goals embodied in Measure D. Infrastructure needed to create adequate service for the East County is acceptable;

Policy 75 directs the County to conserve prime soils (as defined by the USDA Soil Conservation Service Land Capability Classification) and Farmland of Statewide Importance and Unique Farmland (as defined by the California Department of Conservation FMMP [Farmland Mapping and Monitoring Program]);

Policy 76 directs the County to preserve the Mountain House area for intensive agricultural use (Northeastern Alameda County);

Policy 84 directs the County to give highest priority in areas designated "Large Parcel Agriculture" to agriculture operations;

Policy 85 (and Policy 81) restates the concept that areas designated "Large Parcel Agriculture" include agricultural processing facilities and other uses that primarily support the area's agricultural production;

Policy 91 requires the County to encourage cities in the East County to adopt policies and programs (such as mitigation fees for the conversion of agricultural lands within city boundaries and on lands to be annexed to a city) to fund the Alameda County Open Space Land Trust for protection of resources and the preservation of a continuous open space system outside the Urban Growth Boundary (County of Alameda, 1996);

Policy 140A: The County shall recognize the Byron (East Contra Costa County) Airport as a regional resource, and shall work with Contra Costa County to ensure that land uses approved in Alameda County within the Byron Airport's referral area are compatible with the airport's operations; and

Policy 199: The County shall require that, where conflicts between a new use and the airport that could interfere with the airport's operations are anticipated, the burden of mitigating the conflicts will be the responsibility of the new use.

Alameda County Measure D – Save Agriculture and Open Space Initiative

Alameda County residents approved "Measure D" in November 7, 2000 as a measure to restrict urban development and protect agricultural lands. Measure D modifies the East County Area Plan (ECAP) portion of the Alameda County General Plan. The measure states:

The purpose of this initiative is to preserve and enhance agriculture and agricultural lands, and to protect the natural qualities, the wildlife habitats, the watersheds and the beautiful open spaces of Alameda County from excessive, badly located and harmful development. The measure establishes a County Urban Growth Boundary, which will focus urban-type development in and near existing cities where it will be efficiently

served by public facilities, thereby avoiding high costs to taxpayers and users as well as to the environment. The ordinance is designed to remove the County government from urban development outside the Growth Boundary.

The limitations this measure imposes on the amount and location of development aim at preventing excessive growth and curbing the juggernaut of urban sprawl. The Initiative will reduce traffic congestion, air and water pollution, loss of historic and scenic values and the blighting of existing city centers; and will help maintain a high quality of life in Alameda County.”(Measure D, November 2000)

Measure D redefined the “Large Parcel Agriculture” description for the ECAP from that which was originally adopted by the County Board of Supervisors in 1994. It now requires a 100 acre minimum parcel size. The measure also re-designated areas zoned as “Urban Reserve” in the ECAP to “Large Parcel Agriculture.” Measure D also amended portions of the ECAP text.

Alameda County Zoning Ordinance

The Alameda County Zoning Ordinance (Title 17 of the Alameda County General Code) establishes land use (zone) districts in the unincorporated area. In each specific land use district: land uses, dimensions for buildings, and open spaces are regulated for the purpose of implementing the general plan of the county, protecting existing development, encouraging beneficial new development, and preventing overcrowding and congestion.

The proposed project site is within an “A” (Agricultural) District (County of Alameda, 2001). Agricultural districts or A districts are established to promote agricultural and other nonurban uses, to conserve and protect existing agricultural uses, and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary for the general welfare (County Zoning Ordinance, Section 17.06.010). Public utility buildings or uses, excluding such uses as a business office, storage garage, repair shop or corporation yard, would require a conditional use permit (Item J, County Zoning Ordinance Section 17.06.060).

Other Applicable County General Plans and Zoning Ordinances

Contra Costa County General Plan

A portion of the project’s water supply pipelines lie within Contra Costa County on lands designated as “Agriculture” and “Public/Semi-Public.” The Contra Costa County General Plan (1995 – 2010), adopted in 1996, expresses the broad goals and policies, and specific implementation measures, which guide the County’s decisions on future growth, development, and conservation of resources through the year 2010. In addition to the seven mandatory elements prescribed by the State, the Contra Costa County General Plan includes a Growth Management Element and a Public Facilities/Services Element. Applicable goals and policies include:

Privately owned utility corridors may be created on lands designated as Public/Semi-Public (Section 3.7.a – Public and Semi-Public) and are also allowed within agriculturally designated lands.

Lands designated as agriculture shall not exclude or limit types of agriculture, open space, or non-urban uses (Section 3.7.b – Agriculture) (County of Contra Costa, 1996).

Contra Costa County Zoning Ordinance

The Contra Costa County zoning ordinance (Title 8 of the Contra Costa County General Code) establishes zoning districts and contains regulations governing the use of land and improvement of real property within zoning districts. The Zoning Ordinance implements the land use policies of the Contra Costa County General Plan (County of Contra Costa, 2000).

San Joaquin County General Plan

The objectives of the San Joaquin County General Plan are intended to protect agricultural lands for the continuation of commercial agricultural enterprises, small-scale farming operations, and the preservation of open space. The plan also identifies and classifies agricultural lands with small-scale farming operations and dwellings and seeks to minimize impacts to agriculture from urban development. The County implements its agricultural policies through participation in the FMMP and use of this information in the project planning and approval process (County of San Joaquin, 1995a). Approximately 1.5 miles of the recycled water line lie within the county's Agriculture-Urban Reserve designation and within the Mountain House Specific Plan (EAEC, 2002).

San Joaquin County lands within a 6-mile radius of the project site include lands designated as general agriculture, residential, commercial, public, and parks. Within a 1-mile radius of the project site, San Joaquin County lands are comprised of areas designated as residential and commercial.

Resolution Opposing the Proposed Construction of a Major Power Plant on the Border of San Joaquin County/Alameda County Line

Resolution R-01-406, passed and adopted June 26, 2001, by the San Joaquin County Board of Supervisors, states the Board's opposition to the construction and operation of the East Altamont Energy Center until San Joaquin County's concerns have been addressed or impacts to San Joaquin County are mitigated.

San Joaquin County Development Title

The San Joaquin County zoning ordinance (Title 9 of the San Joaquin County General Code) establishes zoning districts and contains regulations governing the use of land and improvement of real property within zoning districts. The Development Title implements the land use policies of the San Joaquin County General Plan (County of San Joaquin, 1995b). Portions of the recycled water pipeline are located in the County's Agriculture-Urban Reserve 20 (AU-20) zone (EAEC, 2002).

Mountain House Master Plan

The Mountain House Master Plan follows state guidelines for Specific Plans, though it is called the Master Plan to distinguish it from Specific Plans for smaller areas within the Mountain House community. The Mountain House Master Plan implements the amendment to the San Joaquin County 2010 General Plan, which added the Mountain House community to the General Plan. The Master Plan presents plans for land use, infrastructure, environmental resources, public service provisions, objectives, policies, and implementation measures. The Mountain House community is located approximately 8 miles to the north of the proposed project site (County of San Joaquin, 2000). Approximately 0.5 miles of the recycled water line runs alongside Mountain House areas zoned for General Industrial and Public Facilities (EAEC, 2002).

SETTING

SITE AND VICINITY DESCRIPTION

The proposed East Altamont Energy Center (EAEC) is to be built on a 40-acre portion of an approximately 174-acre parcel located near the northeast intersection of Mountain House Road and Kelso Road in unincorporated Alameda County (EAEC 2001 and EAEC 2001r). The site is bounded to the north by Byron Bethany Road, which is a two lane road running diagonally northwest to southeast; by Kelso Road to the south, which is a two-lane road running east-west; and to the west by Mountain House Road, which is a two lane road running north-south.

The parcel is currently being used for grazing and to farm oats, alfalfa, and hay crops, and occasionally row crops, such as tomatoes. The site had previously been used for dairy cows. A single-family residence, which would be vacated prior to the construction and operation of the project, currently exists on the property (AFC, pg. 8.4-2).

The site is surrounded by agriculture. It is across the street (Mountain House Road) from the Western Area Power Administration (Western) Tracy substation and major transmission line corridors. Three high voltage transmission lines cross the property north of the proposed plant site. Within 2.5 miles to the southwest of the project site are the Bethany Reservoir, the California Aqueduct and the Delta-Mendota Canal. The project is approximately 1 mile south of the Clifton Court Forebay. Portions of the east slope of the coastal foothills are within the vicinity of the project.

The project site and most of the associated linear facilities are on or adjacent to "Prime Farmland." One-hundred and thirty-four (134) acres of the 174-acre parcel that are proposed to remain in agricultural use consist of Prime Farmland as shown on AFC, Figure 8.9-2 *Project Area Agriculture* prepared by CH2MHill. While the site has previously been cultivated for row crops (i.e., tomatoes and the farming of oats, alfalfa, and hay), crops have been removed from the project site and the land has been graded, leaving exposed soil (CDC, 1998; EAEC 2001a, AFC Section 8.9).

SURROUNDING LAND USE

Land uses surrounding the site include large parcel agriculture, electric utilities, highways, recreation, an elementary school, a railroad ROW, and water management projects. Specific surrounding uses are described as follows:

The Tracy substation is located to the southwest of the proposed site, on the north side of Kelso Road, comprising the substation and major transmission line corridors converging into the substation, including:

One 500-kV line exits north from the substation and two 500-kV lines run south from the substation;

Four 230-kV lines exit to the north, four 230-kV lines exit to the south, and another two 230-kV lines run east;

One 69-kV line exits south, and another 69-kV line runs north from the substation.

Several 230-kV transmission towers are located immediately south of the site along Kelso Road.

Bethany Reservoir, a State recreation area, is located approximately 2.5 miles to the southwest.

The California Aqueduct and the Delta-Mendota Canal, are located approximately 2 and 2.5 miles west of the project, respectively.

Byron Bethany Road, along the water supply line ROW and northern boundary of the site, is designated a Scenic Highway.

Scattered rural residences associated with agricultural uses, such as single-family dwellings/farmhouses, and ranchette-style housing with farm equipment storage, occur within 1 mile southwest of the project site.

The Mountain House School, an elementary school (K-8) with 58 students, is located just over 1 mile south of the proposed site. (County of Alameda, 1996; County of Contra Costa, 1996; EAEC 2001a, AFC Section 8.4)

The Livermore Yacht Club, a 24-slip boating facility, operates a marina approximately 1.5 miles northwest of the project site on Clifton Court Forebay in Contra Costa County.

Byron Airport is approximately 3 miles northwest of the site in Contra Costa County.

Construction for the new community (i.e., urban development) of Mountain House is occurring approximately 2 miles southeast of the project site in San Joaquin County. However, the boundaries for the future development will be approximately one mile east of the site.

Grazing and row crop agriculture exists along the project's electric transmission line route from the project site to the Tracy substation on the adjacent property across Mountain House Road (EAEC 2001a, AFC Section 8.4).

The project's natural gas pipelines would cross or enter pastures, stockponds, vineyards, and low-density residential areas with farmhouses and ranchette-style

houses in agricultural land use areas. These pipelines would also enter the Delta-Mendota Canal water management area and lie adjacent to the Tracy substation transmission facility (EAEC 2001a, AFC Section 8.4).

The water supply line for the project would cross: irrigated agricultural land and pasturelands; the Delta-Mendota Canal water management area which runs adjacent to Mountain House Road and the Tracy substation; and would enter into the California Aqueduct water management areas (EAEC 2001a, AFC Section 8.4).

PROJECT FEATURES

The EAEC would consist of an 820 MW combined cycle plant augmented by 245 MW of duct firing, and a 230 kV switchyard. These facilities would occupy approximately 25 acres.

The linear facilities for the project would include two new 0.5-mile 230-kV transmission lines in Alameda County; a 1.8-mile natural gas supply line in Alameda County; a 2.1-mile water supply line in Alameda and Contra Costa Counties; a 1.5-mile recycled water line in Alameda and San Joaquin Counties, and a buried, short fiber optic line running across Mountain House Road from the project site to the Tracy Substation (EAEC, 2002).

The raw water supply line would follow Mountain House Road and Byron Bethany Roads for short distances before following a field road and crossing under the Delta Mendota Intake Channel. All raw water supply lines proposed for the project would exist in zones designated by both Alameda and Contra Costa Counties as either agricultural or public zones.

An approximately 4.6-mile recycled water line would run northeast from the project site to Byron Bethany Road, southeast along the south side of the road crossing from Alameda to San Joaquin County, east along Bethany Road and then north on Wicklund Road, both in San Joaquin County.

A new 20-inch natural gas pipeline would be installed along an existing ROW, and would connect to PG&E's main existing pipeline. All gas pipeline alternatives would lie within areas designated as Large Parcel Agricultural by Alameda County (County of Alameda, 1996; County of Contra Costa, 1996; EAEC 2001a, AFC Section 8.4).

IMPACTS

According to Appendix G of the Guidelines to the California Environmental Quality Act (CEQA), a project may have a significant effect on land use if a proposed project would:

- conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating an environmental effect;

- disrupt or divide the physical arrangement of an established community; or

convert Prime Farmland, Farmland of Statewide Importance, or Unique Farmland to non-agricultural use.

A project may also have a significant impact on land use if it would create unmitigated noise, dust, public health hazard or nuisance, traffic, or visual impacts or if it precludes or unduly restricts existing or planned future uses.

CONFORMITY WITH LAWS, ORDINANCES, REGULATIONS AND STANDARDS

Public Resources Code § 25525 states that the Energy Commission shall not certify any facility when it finds "that the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless the [Energy] commission determines that such a facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity. In making the determination, the commission shall consider the entire record of the proceeding, including, but not limited to the impacts of the facility on the environment, consumer benefits, and electric system reliability." In no event shall the commission make any finding in conflict with applicable federal law or regulation. When determining if a project is in conformance with state, local or regional ordinances or regulations, the Energy Commission typically meets and consults with applicable agencies to determine conformity and, when necessary, "to attempt to correct or eliminate any noncompliance" (§ 25523(d)(1)). The laws, ordinances, regulations, standards (LORS) and policies applicable to the project have been analyzed below to determine the extent to which the EAEC is consistent or at variance with each requirement or standard.

Federal Aviation Administration

The FAA has completed an aeronautical study for the EAEC under the provisions of Title 49, United States Code, section 44718 and, Title 14 of the Code of Federal Regulations. This aeronautical study revealed that the proposed EAEC structure does not exceed obstruction standards and would not be a hazard to air navigation (EAEC 2001n). To ensure compliance with FAA regulations regarding the marking and/or lighting of the EAEC's exhaust stacks, staff is recommending that the Commission require Condition of Certification **LAND-5**.

California Land Conservation Act of 1965

The 174-acre subject property does not have a land conservation contract. Also, the property is not within a Williamson Act preserve or a Farmland Security Zone. The linear facilities do not cross Williamson Act preserve lands or a Farmland Security Zone.

Delta Protection Act of 1992

The project site lies within the Secondary Zone of the statutory Delta; therefore it is not required to conform to the state regional land use plan required for the Primary Zone area designated by the Act.

Subdivision Map Act, 1972

Calpine has a purchase option on a 174-acre parcel. The power generation facility would occupy up to 40 acres of the property. A letter received from Adolph Martinelli,

Director of the Alameda County Community Development Agency, Planning Department (ACCD A) states:

ACCD A believes that the existing 174-acre parcel for which the project is proposed is a legally recorded parcel. This land was made a parcel prior to the Subdivision Map Act, and may have existed as a parcel as early as the 1800's. No subdivision of the parcel has been proposed to our knowledge, although our understanding is that the power plant would share the parcel with continued agricultural activities. To, reiterate, ACCD A staff believes this parcel to be a legal parcel, and is preparing a Certificate of Compliance to demonstrate this status. The Certificate of Compliance will be made available to the CEC upon completion (ACCD A, 2001a).

The Alameda County Certificate of Compliance was docketed on November 9, 2001, in Data Set 2I. Therefore, it conforms to the requirements of the Subdivision Map Act.

Alameda County Land Use LORS and policies

Alameda County ECAP and Zoning Ordinance

Energy Commission staff has reviewed the ECAP; Measure D which modifies the ECAP; and the Alameda County Zoning Ordinance. Staff has identified four policy items that we think are unclear, and may be subject to varying interpretations. These policy items are summarized below:

The ECAP, as modified by Measure D, restricts urban development beyond the Urban Growth Boundary and protects agricultural lands and open space, which may conflict with the construction of a power plant.

Measure D prohibits public facilities or other infrastructure in excess of that needed for permissible development, and it is not obvious that these power plants are "needed" to support development in the region.

Staff is unsure how the project could be considered compatible with Alameda County's "Large Parcel Agriculture" general plan land use designation as amended by Measure D.

The power plant project may not conform to the allowable uses for the County's "A" District designation, particularly given the agriculture-oriented provisions of Measure D.

Staff generally considers electric generating facilities such as the EAEC to be large industrial uses, which depending on the overall geographic setting, can fit into the broad category of urban development. The ECAP as modified by Measure D, emphasizes the County's commitment to agricultural activities and agricultural land preservation in the region which includes the EAEC site. Measure D's redefinition of the ECAP designation of Large Parcel Agriculture requires a minimum parcel size of 100 acres. Although the EAEC parcel size is 174 acres, the EAEC is clearly a non-agricultural use which would require conversion of prime agricultural land.

While Measure D focuses primarily on limiting East County development to very low density agricultural uses, its Policy 14A does permit infrastructure necessary to provide

adequate services for the area. Its redefinition of the Large Parcel Agriculture designation permits utility corridors. Staff's review of the ECAP as amended by Measure D, indicated that large power plants were not specifically addressed.

The County's Zoning Ordinance specifies that public utility uses are conditional uses which are permitted in A districts, if approved by the County's zoning administrator. Since the EAEC is a privately owned, merchant power plant that would serve a broad region of electricity consumers beyond the confines of the ECAP area, staff was uncertain about its status as a public utility use. Staff believes that the emergence of merchant plants in California has made the concept of electricity generation as a "public good or service" somewhat ambiguous. Furthermore, staff was uncertain about whether Measure D's provisions would affect the uses allowed in A Districts.

Energy Commission staff has reviewed letters dated August 15, 2001, October 4, 2001 and April 26, 2002 from the Director of the Alameda County Community Development Agency. The letters discuss the County's conclusions regarding the EAEC's compatibility with the ECAP, the provisions of Measure D, the Alameda County Zoning Ordinance, and the issue of "need" (as referenced in Measure D) in regard to the facility. The Director's August 15, 2001 letter also addressed the status of the site as a legal parcel in accordance with the State Subdivision Map Act.

Pursuant to the four local land use policy items noted above, and the first two letters from Alameda County, Energy Commission staff met with the Director of the County's Community Development Agency, Adolph Martinelli, and his staff on November 16, 2001. We discussed a number of questions related to the County's interpretation of its land use LORS and policies for the East County area, and how Measure D is being implemented.

Mr. Martinelli and his staff stated that, with respect to Alameda County's land use LORS, an electric power plant falls into a public service infrastructure category, rather than urban development such as a residential subdivision or a manufacturing facility. In the infrastructure context, they believe that an electric power plant use is compatible with agricultural uses, and allowed under the ECAP's Policy 14A.

They acknowledged that given the 1,100 MW size of the EAEC, the project will provide electricity beyond that "needed" by the East County area residents and businesses. However, they stated their belief that the ECAP/Measure D language, when applied to energy production, does not have a geographic restriction. Therefore, electricity produced at the EAEC could serve the needs of the East County area and beyond into the larger California electricity market, without conflicting with ECAP/Measure D. Furthermore, the EAEC would function as a public utility because it substantially serves a key need of the public at large.

Commission staff formalized the questions asked at the November 16, 2001 meeting in a March 7, 2002 letter to the Director of the County's Community Development Agency, Adolph Martinelli. Commission staff issued the letter in order to receive clarification on issues raised in the first two letters and the November meeting. The April 26, 2002 reply to the Commission's letter concurred with and formalized the answers provided at the meeting.

The Commission staff believes that there are a number of reasonable perspectives on the language relevant to new power plant projects in the ECAP, Measure D, and the

Alameda County Zoning Ordinance. The applicability of Measure D to a large power plant proposal in an agricultural area with Prime Farmland, seems particularly open to varying interpretations. While staff considers the EAEC to be an industrial use requiring agricultural land conversion, we believe that Alameda County's interpretation of the plant as infrastructure which is needed to meet electricity needs in the County is plausible. The County's overall conclusion that the project complies with the ECAP, including the provisions of Measure D, is also plausible. The Alameda County letters and November meeting provide Commission staff policy guidance for the project's conditions of certification and provide the County's findings regarding the consistency of the project with County LORS. While the Energy Commission is the CEQA lead agency, staff generally defers to local governments' interpretation of their land use LORS and policies.

While Commission staff has received further information from the County since the PSA in the form of the April 26, 2002 letter, staff's conclusions remain unchanged from the PSA. Although staff does not completely agree with the conclusions of the County, we find that its interpretation is a reasonable one and defer to the County's interpretation of their own laws, ordinances, standards, and policies.

To ensure that the EAEC conforms with the Alameda County Zoning Code, staff is recommending that the Commission require the following Conditions of Certification:

LAND-1 regarding compliance with the design and performance standards for the A District;

LAND-2 regarding compliance with the County's parking standards;

LAND-3 regarding compliance with the County's outdoor advertising regulations applicable to any EAEC signs erected (either temporary or permanent);

LAND-4 regarding the County's review and comment on descriptions of the final laydown/staging areas identified for construction of the EAEC; and

LAND-6 regarding compliance with the County's requirements for minimum setbacks from the property line.

Alameda County Agricultural Land Preservation Activities

Alameda County is in the process of forming an agricultural land trust, which is an impact mitigation response to the farmland and open space conversion associated with the EAEC project, and part of its overall effort to implement ECAP Policies 76 and 77 and Measure D. On August 28, 2002, the Alameda County Board of Supervisors adopted an Amended and Restated East Altamont Energy Center Mitigation Agreement which was signed by a representative from the Alameda County Counsel's Office, and a representative of the applicant. The amended and restated provisions in the agreement reflect the County's acceptance of the Commission staff's suggestions to strengthen the linkage between the use of funds for farmland preservation and mitigation of impacts.

Conditional Use Permit Findings Required for Public Utility Uses in "A" Districts

The Director of the Alameda County Community Development Agency states in his August 15, 2001 letter that the Zoning Administrator may conditionally approve the proposed project. At staff's November 16, 2001 meeting with Alameda County staff, Mr. Sorenson of the County Planning staff agreed with Energy Commission staff that if

Alameda County was the lead agency for this project, then the County would require a conditional use permit application and the four findings stated below under provisions of its Zoning Ordinance. Mr. Sorenson agreed to the Energy Commission staff's request that the County staff make these findings, which were received in a letter from the Director of the County's Community Development Agency, Adolph Martinelli, dated December 17, 2001. In this letter, the Director provided a list of findings that the County would be required to make for the project if it were the authorizing agency to bring it into conformity with Alameda County LORS. The conditional use permit findings from the December 17, 2001 letter are presented as follows:

1. Is the use required by the public need?

Yes. The State of California experiences episodes when the grid, or system of power generating facilities, transmission lines and substations that provide electrical energy to California, is unable to either generate or transmit enough energy to all users to allow uninterrupted supply to homes, commercial and industrial uses, and essential public services. The State of California imports a considerable percentage of the electricity consumed because there is inadequate generating capacity within the state. Rolling blackouts are implemented by the California Independent System Operator to fairly apportion the limited energy. Alameda County utilizes the same grid network as the rest of the State, and is subject to these periodic shortages of electrical energy. The proposed power plant would provide a significant contribution to the State and County electrical energy supply and reduce the potential for interruption of electrical service during periods of high consumption. In addition, generation from cleaner, modern facilities helps displace generation from older more polluting plants, thereby reducing air emissions (ACCD, 2001c).

2. Will the use be properly related to other land uses and transportation and service facilities in the vicinity?

Yes. Although the proposed use is not agricultural in nature, the applicant has agreed to help preserve and enhance agricultural use within Alameda County, both locally on the same property, and in other areas through the use of grants to County for agricultural preservation. The use will not inhibit agricultural use on adjacent parcels of land, it will not significantly affect the immediate human environment if proposed mitigation measures are adopted and implemented, and the low volume of trips generated by the proposed power plant is fully compatible with the adjacent rural transportation system. The location of the proposed plant is considered appropriate due to the close proximity of available water, natural gas supply lines and electrical lines, all of which are essential for the production of electricity. The proposed project is compatible with other public, utility, and industrial uses nearby including the Tracy substation, pumping plants for the Delta-Mendota Canal and the California Aqueduct, the PG&E gas compressor station and several wind turbine projects. All required services are being provided (ACCD, 2001c).

3. Will the use, if permitted, under all circumstances and conditions of this particular case, materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood?

No. The mitigation, monitoring and reporting elements described in the Application for Certification by this project, further described in the Preliminary Staff Assessment in the sections on Public Health, Hazardous Materials, Worker Safety, Transmission Line Safety and Nuisance, and Waste Management for this project, and agreed to by the applicant, will ensure that the use will not be detrimental to any of the surrounding properties or the health, safety or welfare of the general public (ACCDA, 2001c).

4. Will the use be contrary to the specific intent clauses or performance standards established for the District in which it is to be considered?

No. Public and quasi-public uses, which include public utilities and private entities that provide services such as natural gas, electricity, and water and that serve an important public need, are conditionally permitted in the A – Agriculture District, and with appropriate conditions of approval and design considerations are consistent with applicable policies of the Alameda County General Plan including the East County Area Plan (1994) as amended by Alameda County Measure D (November 2000) (ACCDA, 2001c).

Commission staff believe that the conditional use permit findings presented by the County are not unreasonable, and that the proposed EAEC is consistent with the findings and could be permitted as a conditional use.

Other Local Land Use LORS and policies

Energy Commission staff has reviewed the LORS of adjacent county jurisdictions and has identified no land use impacts or inconsistencies with San Joaquin or Contra Costa County LORS and policies. The linear facilities extending from the proposed project into Contra Costa County are consistent with the land use designation and zoning for the lands they traverse. Similarly, the linear facilities extending from the proposed project into San Joaquin County are consistent with the land use designation and zoning for the lands they traverse.

COMPATIBILITY WITH EXISTING AND PLANNED LAND USES

The project would be constructed on a 40-acre portion of a 174-acre agriculturally designated parcel. The applicant has a purchase option on the property.

Existing land uses in the vicinity of the subject property consist of large acreage agricultural lands and agricultural related operations, the Tracy substation; 69 kV, 230 kV, and 500 kV transmission lines and the California Aqueduct and Delta-Mendota Canal water management areas.

Western operates the Tracy substation and the adjacent transmission corridor, the Delta-Mendota Canal is operated by the U.S. Bureau of Reclamation, and the California Aqueduct is operated by the California Department of Water Resources. These government operated facilities are designated “Major Public” by the ECAP. The ECAP defines the “Major Public” designation as providing for “government–owned regional and subregional facilities such as hospitals, jails, college, civic centers, and similar and compatible uses.” (ECAP pg.47, March, 1996).

Staff believes that the project's consistency with: 1) the County's land use designation and zoning for the site; and 2) the current development pattern for the area established by the ECAP, as amended by Measure D, is unclear. However, we believe that Alameda County's interpretation and conclusions that the EAEC is an allowed and compatible use are reasonable.

The project's construction would result in the conversion of 40 acres from an agricultural use to a non-agricultural use. It would also involve the loss of land considered "Prime Farmland" by the California Department of Conservation. Staff considers the loss and conversion of agricultural land to be inconsistent with ECAP policies, and potentially a significant impact under CEQA. In order to help offset the project-related impacts from the loss of prime agricultural land, the applicant, in coordination with Alameda County, has proposed to mitigate by contributing funds to Alameda County for a 1:1 purchase of prime agricultural land for permanent farming use and/or easement purchases; and establishment of a local agricultural land trust.

Staff supports the above mitigation approach in principle, but recommends **Condition of Certification LAND-7** to ensure that the potentially significant impact caused by the conversion of agricultural land will be fully mitigated. The applicant has signed the Amended and Restated East Altamont Energy Center Farmlands Mitigation Agreement, which is a joint document also signed by Alameda County. Per the Agreement, the applicant is committed to providing a total of one million dollars to the County for the purchase of 40 acres of prime farmland that would be in permanent agricultural use, through establishment of a preserve or purchase of easements. Staff believes that when the County has received the initial and final payments, the potentially significant impact will have been sufficiently mitigated. **LAND-7** provides a written, formal link between the Commission's decision on the EAEC project and the Agreement.

The water supply line and natural gas pipeline alternative alignments would involve use of land currently being used in agricultural production, and would be temporarily affected during construction. The topsoil in these areas would be temporarily removed during the construction period, and temporarily converted to non-agricultural use by this project. Soil surface would be returned to the original grades and agricultural use upon completion of construction activities. Therefore, no existing farmlands would be converted to non-agricultural use for the EAEC's linear facilities. The impacts would be less than significant.

The Mountain House School, located approximately one mile south of the project site, would be sensitive to air quality impacts of the proposed project. Recreational users of Livermore Yacht Club (approximately a mile from the facility) and Bethany Reservoir (more than 2.5 miles from the facility), would be affected by air quality impacts and the visual impacts of the plume from the proposed facility. As travelers on a scenic highway less than 0.25 miles from the project site, Byron Bethany Road users would be similarly affected by visual impacts of the facility. The project would not preclude future residents and other users of the Mountain House development located in San Joaquin County from pursuing community activities. These impacts are addressed in greater detail in the **AIR QUALITY** and **VISUAL RESOURCES** Sections of the PSA. Overall, however, proposed project construction and operation activities would not preclude recreational land uses on nearby lands.

Without mitigation in the form of agricultural land preservation and land trusts, the project presents a potentially significant impact due to the conversion of agricultural resources and open space. Staff believes that with the implementation of **Condition of Certification LAND-7**, the EAEC is compatible with existing and planned land uses in the East Altamont area, and impacts would be less than significant.

CUMULATIVE IMPACTS

Land Use Table 1 displays the cumulative projects within a 6-mile radius of the project site.

**Land Use Table 1
Cumulative Development Projects**

Development	Size	Location	Jurisdiction	Status
Old River Specific Plan	1,000 acres	North of I-205 and southeast of the EAEC site	San Joaquin County	Community meetings have been held regarding what would be a commercial/industrial development. The plan is under consideration as an amendment to the San Joaquin County General Plan.
Auto Auction Facility	200 acres	Patterson Pass Road Business Park	San Joaquin County	Under review by San Joaquin County.
Mountain House Community Service District – “New Town” Development	5,000 acres	Approx. 1 mile east of the EAEC site, bounded to the west by the Alameda County Line, to the east by Mountain House Parkway and between I-205 to the south and the Old River to the north.	San Joaquin County	Phasing for the Specific Plan I has begun with construction of the Mountain House Community Service District’s water treatment plant, site grading, and laying of infrastructure on the site property. The project involves development of a new community with residential, commercial, and industrial development
Catellus Project	Unknown	Approx. 5 miles southeast of the EAEC site, between I-205 and Grant Line Road, west of Lammers Road	City of Tracy	Application for annexation to the City of Tracy to be filed.
Bright Development	160 acres	Approx. 6 miles to the southeast, bounded by Lammers Road to the east, I-205 to the north, and 11 th Street to the south.	City of Tracy	Application for annexation to the City of Tracy filed.
Tracy Gateway	538 acres	Approx. 4.5 miles to the southeast, along I-205	City of Tracy	Application for annexation to the City of Tracy filed and in Draft EIR process.
North Livermore Plan	13,500 acres	Approx. 7.5 miles to the southwest, north of Livermore	City of Livermore	EIR was finalized and adopted by the City of Livermore in 2000. The plan has been delayed due to passage of Alameda County Measure D.
Califia community	6,800 acres	Approx. 8 miles east of the EAEC, near Lathrop in western San Joaquin County..	City of Lathrop	Lathrop has annexed the property; environmental permitting process is in progress. Groundbreaking is expected in 2004.
Tracy Peaker Project	9 acres	Approx. 8 miles southeast of the EAEC site, in San Joaquin County, south of Schulte Road and west of Lammers Road	San Joaquin County	Approved by CEC; construction pending.
FPL Tesla Power Project	25 acres	Aprox. 5.5 miles south of the EAEC site, in Alameda County, just north of the Tesla Substation on Midway Road	Alameda County	Under the 12-month CEC review process.

Source: TPP, 2001; San Joaquin County, 2000; San Joaquin County, 2001; EAEC, 2001; FPL Tesla, 2001; HDR, 2001; Lombardo, 2001; Stentz, 2002.

As shown in **LAND USE Table 1** above, significant amounts of development are occurring in San Joaquin County, including large areas west of the City of Tracy in the process of applying for annexation to the city. These developments can be characterized as primarily mixed-use with residential, commercial, and light industrial sectors. The size of the proposed EAEC remains small relative to the other proposed projects in the area, but combined with the other projects contributes to a regional loss of agricultural land and open space.

The EAEC, in combination with other proposed projects in the project area and region, are expected to contribute to a regional loss of open space and agricultural land. Without mitigation in the form of open space and agricultural land preservation and land trusts the project presents a significant cumulative impact on agricultural resources and open space. Staff believes that the EAEC Farmlands Mitigation Agreement between the applicant and the County of Alameda, along with **Condition of Certification LAND-7**, will mitigate the impacts of this project to a less than significant level.

The proposed project is not expected to make a significant contribution to regional impacts related to new development and growth, such as population immigration, the resultant increased demand for public services, and expansion of public infrastructure such as water pipelines to serve residential development.

ENVIRONMENTAL JUSTICE

Staff has reviewed Census 2000 information that shows the minority population is less than fifty percent within a six-mile radius of the proposed EAEC (please refer to **Socioeconomics Figure 1** in this Staff Analysis), and Census 1990 information that shows the minority/low income population is less than fifty percent within the same radius. However, there is a pocket of minority persons within six miles that staff has considered for impacts. Based on the land use analysis, staff has not identified significant unmitigated direct or cumulative impacts resulting from the construction or operation of the project, and therefore there are no land use environmental justice issues related to this project.

FACILITY CLOSURE

At some point in the future, the proposed facility would cease operation and close down. At that time, it would be necessary to ensure that closure occurs in such a way that public health and safety and the environment are protected from adverse impacts.

The planned lifetime of the EAEC is estimated at 30 years. At least twelve months prior to the initiation of decommissioning, the Applicant would prepare a Facility Closure Plan for Energy Commission review and approval. This review and approval process would be public and allow participation by interested parties and other regulatory agencies. At the time of closure, all applicable LORS would be identified and the closure plan would discuss conformance of decommissioning, restoration, and remediation activities with these LORS. All of these activities would fall under the authority of the Energy Commission.

There are at least two other circumstances under which a facility closure can occur, unexpected temporary closure and unexpected permanent closure. Staff has not identified any LORS from a land use perspective that the applicant would have to comply with in the event of unexpected temporary closure or unexpected permanent closure of the EAEC.

RESPONSE TO PUBLIC AND AGENCY COMMENTS

EAST BAY REGIONAL PARK DISTRICT

Comment: *In a letter Dated January 14, 2002, the East Bay Regional Park District (District) stated that the District is considering development of a number of trails in the Livermore and Tri-Valley area, including the area around the Mountain House development, Bethany Reservoir, and the Brushy Peak Regional Reserve. The District was concerned that development of the EAEC project take the prospect of future trails into account, when addressing roadway improvements and various design components.*

Response: Staff discussed the letter with District staff on June 14, 2002. The District is primarily concerned with preserving trail options in the Bethany Reservoir area, which is approximately 2.5 miles from the EAEC site. Currently, there are no trail plans in the vicinity of the EAEC project, so EAEC roadway improvements and other design features will not affect trail opportunities.

GARY AND DELORES KUHN

G&DK-2a: *The County has designated the site "Agriculture" in its General Plan, whereas the EAEC project is not agricultural and is inconsistent with the General Plan. Productive agricultural land in California is diminishing due to projects like the EAEC.*

Response: Staff has addressed the item regarding General Plan consistency in the FSA section "Alameda County Land Use LORS and policies". Staff has addressed the item regarding the conversion and loss of productive agricultural land in the FSA section headed "Compatibility with Existing and Planned Uses".

G&DK-2c: *Calpine has a lease/option on a piece of property that is adjacent to the EAEC site. This area is also zoned agricultural, whereas Mr. and Ms. Kuhn are concerned that the property will be rezoned to permit more industrial uses.*

Response: The Commission staff has analyzed the land use impacts of the project on a 174-acre parcel, of which 40 acres would be used for the power plant and related temporary staging areas. The remaining acreage is the subject of an agricultural land preservation agreement that Alameda County is pursuing with Calpine. Staff is not aware of any County plans to rezone land surrounding the power plant site. The County has some fairly stringent

regulations regarding the use of agricultural land, which makes rezoning for industrial use in the East Altamont area seem unlikely. The County staff considers the power plant to be service related infrastructure to help meet the electricity needs of the East County region, as well as the greater Bay Area. The project's consistency with the County's regulations is discussed in the FSA section "Alameda County Land Use LORS and policies."

CONCLUSIONS

1. Staff believes that the project's consistency with: 1) the County's land use designation and zoning for the site; and 2) the current development pattern for the area established by the ECAP, as amended by Measure D, is unclear. Although staff does not completely agree with the conclusions of the County, we find that its interpretation is a reasonable one and defer to the County's interpretation of their own guidelines, standards, policies and conclusions that the EAEC is a consistent and allowed use.
2. Staff supports the County's successful effort to reach a mitigation agreement with the applicant regarding the conversion and loss of productive agricultural land, which is a potentially significant impact. After reviewing the final agreement, Staff has concluded that in order to reduce the potentially significant impact to a level of insignificance under CEQA, the applicant must comply with **Condition of Certification LAND-7** in addition to contributing the agreed upon \$1 million fee in the Farmland Mitigation Agreement.
3. The project would not disrupt or divide the physical arrangement of an established community. The communities of Byron in Contra Costa County and Mountain House in San Joaquin County are approximately 3 miles away from the subject property.
4. The project would not preclude or unduly restrict existing or planned land uses. The project would not preclude or unduly restrict the conducting of agricultural land uses on neighboring properties or the operation of the federal and state government facilities across the street from the subject property.
5. With mitigation, operation of the project would not cause any significant noise, dust, public health, traffic, or visual impacts to nearby land uses, nor would the operation of the EAEC contribute substantially to any cumulative land use impacts.

If the project is certified, staff recommends that the Commission adopt the following proposed Conditions of Certification.

PROPOSED CONDITIONS OF CERTIFICATION

LAND-1 The project owner shall comply with the minimum design and performance standards for the "A" District set forth in the Alameda County Zoning Ordinance.

Verification: At least 30 days prior to the start of construction, the project owner shall submit written documentation, including evidence of review by the Alameda County Community Development Agency that the project meets the above referenced requirements and has been reviewed by the County.

LAND-2 The project owner shall comply with the parking standards established by the Alameda County Zoning Ordinance (Title 17, Chapter 52, Sections 780-950).

Verification: At least 30 days prior to start of construction, the project owner shall submit to the CPM, written documentation, including evidence of review by Alameda County, that the project conforms to all applicable parking standards.

LAND-3 The project owner shall ensure that any signs erected (either permanent or for construction only) comply with the outdoor advertising regulations established by the Alameda County Zoning Ordinance (Title 17, Chapter 52, Section 510).

Verification: At least 30 days prior to start of construction, the project owner shall submit to the CPM, written documentation, including evidence of review by Alameda County, that all erected signs will conform to the zoning ordinance.

LAND-4 The project owner shall provide the Director of the Alameda County Community Development Agency for review and comment and the CPM for review and approval, descriptions of the final lay down/staging areas identified for construction of the project. The description shall include:

- (a) Assessor's Parcel numbers;
- (b) addresses;
- (c) land use designations;
- (d) zoning;
- (e) site plan showing dimensions;
- (f) owner's name and address (if leased); and,
- (g) duration of lease (if leased); and, if a discretionary permit was required; (2) copies of all discretionary and/or administrative permits necessary for site use as lay down/staging areas.

Verification: The project owner shall provide the specified documents at least 30 days prior to the start of any ground disturbance activities.

LAND-5 The project owner shall provide appropriate evidence of compliance with Federal Aviation Administration (FAA) regulations regarding the marking and/or lighting of the project's new exhaust stacks. The project owner shall provide to the CPM copies of all completed documents demonstrating FAA compliance in accordance with the schedule set forth in FAA Form 7640-2, Notice of Actual Construction or Alteration or other appropriate documentation as required by FAA. This requirement shall also be applied if at any time the project is abandoned.

Verification: At least 30 days prior to start of commercial operation, the project owner shall submit proof that the project's stacks have been marked and/or lighted in accordance with FAA regulations and requirements.

LAND-6 The project owner shall provide to the CPM for approval, a site plan with dimensions showing the locations of the proposed buildings and structures in

compliance with the minimum yard area requirements (setbacks) from the property line as stipulated in the Alameda County Zoning Ordinance.

Verification: Thirty (30) days prior to the start of construction, the project owner shall submit a site plan showing that the project conforms to all applicable yard area requirements as set forth in the City/County Zoning Ordinance.

LAND-7 The project owner shall mitigate at a one to one ratio for the conversion of prime farmland as classified by the California Department of Conservation, to a non-agricultural use, for the construction of the power generation facility.

Verification: The project owner will provide payment to the Alameda County agricultural land trust of the \$500,000 first installment of a mitigation fee within 30 days following the construction start, and the \$500,000 second and final installment within 30 days of the commencement of commercial operation, as set forth in the East Altamont Energy Center Farmlands Mitigation Agreement.

The project owner shall provide in its monthly compliance reports a discussion of any land and/or easements purchased in the preceding month by the trust with the mitigation fee money provided, and the provisions to guarantee that the land managed by the trust will be farmed in perpetuity. This discussion must include the schedule for purchasing forty (40) acres of prime farmland and/or easements within 5 years of start of construction as compensation for the forty acres of prime farmland to be converted by the EAEC.

The project owner shall provide confirmation to the CPM that the first and final mitigation payments have been made to the Alameda County agricultural land trust.

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